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ERRATA
RE
PRESIDING MEMBER'S PROPOSED DECISION

(For Docket Unit Use)

BLYTHE ENERGY PROJECT II
APPLICATION FOR CERTIFICATION
DOCKET NO. 02-AFC-1

Background: On October 21, 2005, the Committee publicly issued its Presiding Member's Proposed Decision (PMPD), beginning a 30-day public comment period. On November 10, 2005, the Committee conducted a public hearing to receive comments from the active parties on the PMPD. On December 13, 2005, the Committee an additional public hearing on agency and public comments filed at or after the close of the comment period. The following corrections and changes represent the Committee's Errata to the PMPD.

RESPONSE TO APPLICANT & STAFF COMMENTS

Air Quality

Page 17, first paragraph: Correct date for FDOC.

Page 27, under PSD Review: Correct reference to MDAQMD PSD review which is administered by the U.S. EPA.

Biology

Page 59 – Correct the reference to Western as the proponent of the DSWTP by stating that the agency overseeing the DSWTP is the Imperial Irrigation District (IID).

Page 70, under LORS – Supplement the list of applicable state and local LORS.

Page 67-68, **BIO-11** -- Add the Compliance Project Manager (CPM) to the list of regulatory agencies.

Cultural Resources

Page 74, fourth paragraph, second sentence -- Clarify the reference to cultural resource CA-Riv-6725H.

Page 74, fifth paragraph, first sentence -- Clarify the reference to cultural resource CA-Riv-6370H.

Page 82, **CUL-6** & page 84, **CUL-9** - Conform to agreed-upon language about project owner requests to reduce monitoring by a resource specialist and the timing of blessing ceremonies, respectively.

Hazardous Materials

Page 111 -- Correct **HAZ-1** to include agreed-upon text about the types and quantities of hazardous materials to be stored on-site.

Page 114 -- Correct **HAZ-11** to include agreed-upon text concerning the ammonia sensor for the inlet air cooling system.

Socioeconomics

Page 165, **SOCIO-2** -- Include agreed-upon Verification.

Traffic and Transportation (Aviation Safety)

Page 186 – Correct reference to author of May 17, 2005 letter to Florida Power and Light.

Waste Management

Page 229 –**WASTE-6**, change "excavation" to "earth disturbance for construction purposes."

Water Quality

Page 234 - Add language that BEP II would monitor accumulated sediment levels as part of their Drainage, Erosion, and Sediment Control Plan, even though removal of accumulated sediments in the retention basin is the responsibility of the BEP I project owner.

Page 239 -- **WATER QUALITY-5** should be modified to reflect the use of RWQCB permitted evaporation ponds for discharge of wastewater is only during periods of ZLD outages. ZLD plan submittal shall be 60 days prior to ZLD construction.

Page 241 – Add **WATER QUALITY 7** implementing Waste Discharge Requirements (WDR) on the back-up evaporation ponds.

Water Resources

Page 273, **WATER RESOURCES-1(a)** - Correct regarding soil types for Best Management Practices.

Reliability

Page 312, first paragraph 1 – Update the NERC reported availability factor for combined cycle to 2005 figures.

Miscellaneous

Typographical and other minor, non-substantive corrections.

RESPONSE TO EPA COMMENTS

The U.S. EPA filed comments on November 23, 2005, following the close of the public comment period for the PMPD. The EPA attached a copy of a December 2002 letter to the Mojave Desert Air Quality Management District (MDAQMD) asserting deficiencies in the District's Preliminary Determination of Compliance on the project.

In its comments on the PMPD, the EPA re-asserts two of those deficiencies, related to the use of road paving offsets for PM_{10} and the use of interpollutant trade-offs without EPA approval.

Road Paving as a PM_{10} Offset

By way of historical background, the MDAQMD released its Preliminary Determination of Compliance (PDOC) in 2002, which was followed by a public comment period. The EPA's December 2002 comments were made on the PDOC.

The Energy Commission staff coordinated its analysis with the District's for the PDOC. On November 14, 2003, the Staff released it Preliminary Staff Assessment (PSA). The PSA states in several places Staff's concern that the EPA comments on the invalidity of road paving offsets for PM_{10} and the necessity of EPA approval for interpollutant trade-offs, particularly the questionable use of road paving for SOx, bring into question compliance with federal requirements and would necessitate obtaining alternate, valid PM_{10} offsets. (PSA, pp. 4.1-26, 27, 28 & 29) Staff concluded in its PSA that it did not yet consider the Applicant's proposed mitigation to be viable. (PSA, p. 4.1-28) The PSA also notes, however, that an Applicant filing to the District indicated that no alternate PM_{10} offsets have been identified. (PSA, p. 4.1-26)

The MDAQMD released its Final Determination of Compliance (FDOC) on May 3, 2004, approximately seven months after the Staff's PSA. The FDOC incorporated changes the District chose to make in response to the comments on the PDOC and evaluated whether and under what conditions the proposed project will comply with the applicable rules and regulations.

Taking into consideration the FDOC and its own analysis, the Staff subsequently released its Final Staff Assessment (FSA) on April 29, 2005, again addressing road paving as offsets for PM_{10} and as interpollutant offsets for SOx. Staff noted that the MDAQMD would allow road paving to satisfy 126 tons-per-year PM_{10} offset requirement. Using outdated 1998 EPA emission factors, the MDAQMD calculated that 9,280 linear feet of roads would need to be paved. The FSA stated the MDAQMD used the outdated emission factors because it was the methodology in place at the time the Applicant first proposed the project in 2002. Staff stated in its FSA that the EPA offered no further comments on the matter. (FSA, pp. 4.1-27 & 28)

In its FSA, Staff advocated using EPA's updated emission factors and calculated that offset value of the proposed road paving would be reduced from 126 to 70 tons-per-year of PM_{10}. Staff reiterated its reservations about using dust control to mitigate for combustion-related particulate matter and that paving public roads is not a source category that is normally subject to permitting in the District. But Staff acknowledged that the MDAQMD had previously used road paving offsets in earlier projects, including BEP I. (FSA, p. 4.1-30) Staff concluded that with a recommended condition (PMPD Condition **AQ-C9**) the project's emissions, including PM_{10} and SOx, would be fully mitigated by the proposed offsets, plus additional offsets required by the Condition.

During the Committee's Prehearing Conference in July 2005, the Applicant did not indicate that it intended to contest Staff's FSA Air Quality section when it would be presented as Staff's testimony at subsequent Evidentiary Hearings in August 2005. The Committee's review of the Commission Docket Unit records does not disclose any written comments from the EPA in this proceeding on this matter following the District's FDOC, the Staff's FSA, or at the Evidentiary Hearings. Based upon the evidentiary record, the Committee prepared the PMPD and incorporated the Air quality Conditions recommended in the Staff's FSA.

The EPA's comments specifically state that the road paving offsets in the FDOC are "seriously flawed" in that they do not satisfy the fundamental requirements for NSR offsets to be surplus, quantifiable, permanent, and federal enforceable. The December 26, 2002, EPA letter stated, "To ensure the creditability of non-traditional ERC's, such as those generated by road paving, the SIP [State Implementation Plan] must contain an approved protocol for quantifying and guaranteeing the permanence, surplus nature and enforceability of such credits. The PM_{10} credits in the BEPII PDOC cannot be allowed to offset the PM_{10} increases. Therefore, you must required the applicant to obtain and publicly notice valid PM_{10} ERC's before issuing the FDOC." (p. 2)

With respect to the use of road paving as an offset for PM_{10}, the established evidentiary record in the BEP II proceeding discloses that (1) the MDAQMD is in attainment of federal PM_{10} air quality standards, but is non-attainment for the State standards, (2) in this desert setting fugitive dust is the major contributor to PM_{10} violations of State air quality standards, (3) road paving will mitigate for that contribution, (4) there are not sufficient alternative, combustion-source PM_{10} offsets in this desert setting to offset this project, and (5) road paving has previously been used as a valid offset for PM_{10} for BEPI.

The PMPD incorporated air quality conditions **AQ-1** through **AQ-54**, which were derived from the MDAQMD's FDOC. Condition **AQ-18** speaks to the Applicant's obtaining and surrendering to the MDAQMD sufficient valid offsets, including PM_{10}, before the start of construction of the equipment (gas turbine) to which the offset is related. The PMPD also includes a Staff-recommended Condition **AQ-C9**, specifically referring to the road paving PM_{10} offsets obtained from the Colorado River Indian Tribe. **AQ-C9** expressly provides, "The ERC [offset] list shall contain evidence that the MDAQMD has determined that the ERCs are real, enforceable, surplus, permanent, and quantifiable. The project owner may request [Energy Commission] CPM approval for any substitutions or modifications of credits listed below." **AQ-C9** also provides that such a change in the ERC list must be consistent with applicable federal and state laws and not cause the project to result in a significant environmental impact.

The Commission has re-reviewed the PMPD Air Quality Conditions to determine whether they assure compliance with all federal air quality requirements. We do not read the EPA letters to state that road paving ***cannot*** be a valid offset for PM_{10}. The EPA's oral comments at the Committee's December 13, 2005, Workshop confirm this view. EPA's December 2002 letter states that to "ensure the creditability of non-traditional ERC's, such as those generated by road paving," there must an "approved protocol for quantifying and guaranteeing the permanence, surplus nature and enforceability of such credits." Condition **AQ-C9** requires the Applicant's showing that these non-traditional road paving offsets offered in this proceeding be "real, enforceable, surplus, permanent, and quantifiable." To assure compliance with federal law, we believe that Condition **AQ-C9** should be changed to read, "The ERC list shall contain evidence that the MDAQMD and the U.S. EPA have determined that the ERCs

are real, enforceable, surplus, permanent, and quantifiable. … The CPM, in consultation with the District and the U.S. EPA, may approve any such change to the ERC list ….. " The Verification to **AQ-C9** will be made consistent with these changes.

The Commission notes that the EPA's December 2002 letter also stated that the MDAQMD was to require the applicant to obtain and publicly notice valid PM_{10} ERC's before issuing the FDOC. Our record appears to confirm that between the PDOC and the FDOC the road paving offsets were identified and quantified with greater specificity, but they were not actually obtained nor subject to a public review process before the MDAQMD's issuance of the FDOC. Nor did such a process occur prior to the Committee's release of the PMPD. Rather, for our purposes, the Commission is following its practice of requiring the Applicant's identification of specific offsets in our proceeding and awaiting the District's public process to validate and thereafter accept the proposed offsets. In this proceeding, such a practice remains appropriate since there are numerous conditions precedent to the commencement of construction of this project, some of which arise from circumstances in the State's electricity market and others that are specified in our Conditions of Certification. Our evidentiary record discloses that there are ample publicly used, unpaved roads that are candidates for use as offsets. Plus, road paving offsets were called out as PM_{10} offsets in our Blythe I Decision and thereafter identified and validated in the District's public process. Therefore, the Commission believes that it is appropriate for our Decision to regard the District's process to validate the road paving offsets as one of a series of events which will take place at the appropriate time and with the appropriate process, while meeting the requirements of Condition **AQ-C9** to assure substantive compliance with State and federal law.

Therefore, the Commission believes that road paving is an appropriate offset for this project's PM_{10} emissions. Consequently, the next issue is the adequacy of the amount of proposed road paving to offset the PM_{10} emissions. The Commission favors the use of the more up-to-date emission factors in calculating the amount of road paving to create sufficient offsets. The Commission understands that any road paving offsets submitted to the District will be scrutinized in an open, public process for the specific road location and the amount of traffic in order to calculate the resulting offset.

Since Staff's testimony states that there are as many as 36 miles of publicly used Indian reservation roads which could be paved, the Commission has confidence that the Applicant can provide the MDAQMD a sufficient additional inventory of potential paving to satisfy this offset requirement. Thus, the Commission will amend the table appearing in Air Quality Condition **AQ-C9** to include an additional, but as-yet unidentified, of Colorado River Indian Tribe Road Paving as a required offset source for PM10. The Commission is aware that since road paving is not a standard offset source the MDAQMD must use a public notification procedure in its review and approval of road paving as a valid offset. We anticipate this process will identify the specific roads to be paved and the exact linear footage required to comply with the updated emission factor calculation method.

Interpollutant Tradeoffs

With respect to EPA's comment regarding approval of interpollutant trade-offs, the Commission believes that the requirement of MDAQMD Rule 1305(B)(6)(a) needs to be expressly acknowledged in the Decision. The Rule provides:

> Emission reductions of one type of air pollutant may be used as offsets of another type of air pollutant upon approval of the APCO, in consultation with CARB and the approval of the USEPA, on a case-by-case basis as long as the following apply:
>
> (i) The trade must be technically justified, and
>
> (ii) The applicant must demonstrate, to the satisfaction of the APCO, that the combined effect of the offsets and emission increases from the new or modified facility will not cause or contribute to a violation of an ambient air quality standard.

Referring to EPA's December 2002 letter commenting on the PDOC, EPA stated that it has not approved a methodology for determining the 1-to-1 interpollutant trade-off ratios used in the PDOC. EPA states further, "Several methods might be acceptable in conjunction with other considerations for this specific project." (pp. 2, 3) Taking all the EPA's comments together, the Commission finds that the issue is not whether an appropriate interpollutant trade-off ratio can be established in this case, but the necessity and adequacy of the Applicant's demonstration to the MDAQMD and, thereafter, the EPA of a technically justifiable ratio.

Thus, the Commission believes that Air Quality Condition **AQ-18** needs to be amended to expressly acknowledge the required approval of the EPA for the interpollutant trade-off ratios, and will use Staff-suggested language to do so.

RESPONSE TO COMMENTS FROM THE CENTER ON RACE, POVERTY & THE LAW

The Center on Race, Poverty & the Environment (Center), in Delano, California, filed timely comments on the PMPD on behalf of unnamed residents of Blythe and urged the Commission to deny certification of the facility. The Center is not a party to the proceeding, and these comments are the Center's first communication with the Commission on this project since the AFC was filed on February 19, 2002.

Citing the PMPD's rejection of dry cooling as preferable to the proposed wet cooling with degraded groundwater, the Center asserts environmental justice concerns. Specifically, the Center asserts that use of wet cooling instead of dry cooling exposes the community to cooling tower drift and non-criteria air pollutants, creates thermal plumes interfering with air traffic, and causes significant water use in the desert. The Center concludes that the PMPD rejects dry cooling as mitigation for alleged project impacts merely because the Applicant objected to it.

In addition, the Center asserts that the Commission has not sufficiently fulfilled the CEQA analysis on air quality matters, including the use of road paving as an offset for PM_{10} emissions and the ineffectiveness of road paving to mitigate combustion-created $PM_{2.5}$ emissions. The Center also claims that ammonia slip is insufficiently controlled and that the PMPD should require an alternative to the use of an ammonia-based refrigerant for cooling inlet air. Lastly, the Center claims that the PMPD's use of a 6-mile radius study area for cumulative project air quality impacts is arbitrarily undersized.

Wet Cooling versus Dry Cooling

The PMPD extensively discusses the merits of the wet cooling versus dry cooling issue. (PMPD, pp. 260 - 264) Energy Commission staff strongly advocated the use of dry cooling at the project location, or Staff's suggested alternative locations, to avoid the use of water for cooling. There was extensive back-and-forth testimony between the Staff and Applicant at the evidentiary hearings which addressed the adequacy of dry cooling in the desert setting, the size of dry cooling towers that approached comparable cooling capacity, operational flexibility of dry cooling, capital costs, operational costs and inefficiencies, visual impacts, noise impacts, and plume impacts upon aviation. On balance, when compared to the use of degraded groundwater and wet cooling, the evidence convincingly supported the use of wet cooling and the rejection of dry cooling. The use of drift eliminators (Condition **PUBLIC HEALTH-1**) and management of cooling tower water quality (Conditions **PUBLIC HEALTH-2** and **WATER QUALITY-3**) support the PMPD's findings that wet cooling will not cause significant environmental impacts or public health impacts to any neighboring resident or nearby community.

Road Paving PM10 Offsets

The Commission has extensively discussed road paving as PM_{10} offsets, above, in response to the EPA comments. We are calling for road paving credits to be calculated using the more up-to-date emission factors promulgated by the EPA. The PMPD's discussion of road offsets acknowledges the size difference of combustion-produced particulates and dust particulates from the use of unpaved roadways. The evidentiary record discloses that the current violation of the PM_{10} ambient air quality standards in the MDAQMD results from blowing dust. There are not sufficient combustion sources, in the form of industrial facilities, in the desert to themselves cause a violation of air quality standards or to provide combustion-based PM_{10} offsets.

Under these circumstances, the use of the road paving PM_{10} offsets is appropriate and adequate mitigation for the project's PM_{10} emissions. Rather than deferring an analysis of the adequacy of road paving *as mitigation* until after certification as the Center asserts, the Commission has analyzed and confirmed the adequacy of road paving as effective mitigation. However, condition **AQ-C9** acknowledges that the adequacy *of the number of feet* of proposed paving must await the Applicant's submittal of its offset package to the MDAQMD and the public process for their review. In the meantime, the Commission has added clarification that such a calculation will be done with the EPA's updated emission factors, which would add to the effectiveness of the offsets. (PMPD, pp. 21 – 25)

PM2.5

With regard to $PM_{2.5}$, the PMPD discusses that the MDAQMD does not need to develop an air quality management plan for $PM_{2.5}$ because the Mojave Desert Air Basin was designated in 2004 as an area that is either

unclassified or attains both the state and federal $PM_{2.5}$ standards. The maximum 24-hour concentration occurring between 1999 and 2003 was 38.0 µg/m^3 compared to the 1997 U.S. EPA standard of 65 µg/m^3. The record supports the finding that there is not a significant $PM_{2.5}$ impact from the project. (PMPD, p. 22)

Ammonia Slip Limit

The ammonia slip from the project was determined by the MDAQMD to be limited to 10 ppm. In this proceeding, the Energy Commission staff had advocated in its Preliminary Staff Assessment that ammonia slip be limited to 5 ppm, largely on the basis that since catalyst vendors can virtually assure ammonia slip at or below 5 ppm that the Blythe project be limited to the best performance available. Staff has made this recommendation in other power plant proceedings as well. The EPA and California Air Resources Board support the 5 ppm limitation in this case.

The MDAQMD did not find it necessary to control ammonia slip down to 5 ppm largely because the area is ammonia rich so that "tighter" controls would not produce a benefit in the macro environmental setting. Consequently, the MDAQMD set a limit of 10 ppm in its Final Determination of Compliance.

Typically, the Staff holds public workshops to discuss with other agencies, the Applicant and public the analysis and recommended conditions in its Preliminary Staff Assessment and its Final Staff Assessment. These workshops are not transcribed. The Commission observes from the change in language from the PSA to the FSA, that the Staff's recommended 5 ppm ammonia slip condition had changed into an acknowledgement of the MDAQMD 10 ppm ammonia slip limit, *averaged over one hour*, but suggested a 5 ppm performance limit *averaged over 24 hours*. If the 5 ppm limit were exceeded the Applicant was to replace or repair the ammonia injection grid, unless the Applicant could demonstrate that the exceedance was a "false trigger." The Applicant agreed to the Staff's proposed condition at the evidentiary hearings. As worded, Condition **AQ-C10**, which fully incorporates Staff's recommendation, would allow the Applicant to show that the ammonia slip "consistently" remained below 5 ppm and that the initial exceedance was a false trigger to avoid repair or replacement of the ammonia injection grid.

The Center objects to the use of "consistently" since the condition does not define its meaning and argues that if 5 ppm is achievable it should be required without exception.

In addressing the Center's comments, the Commission must view the larger context into which Condition **AQ-C10** fits. To comply with applicable air quality laws, the project must meet the MDAQMD limit of 10 ppm. However, Staff believes that ammonia slip above 5 ppm potentially contributes to the formation of secondary PM_{10}. Yet, Staff's testimony is that secondary particulates are probably a minor fraction of overall PM_{10} since there are few major sources of PM_{10} precursors. The EPA December 2002 comments on the PDOC also recommended a 5 ppm limit based upon guidelines from the California Air Resources Board. (PMPD, p. 26)

The Commission agrees with the Center that the word "consistently" as applied to operating below 5 ppm creates a standard-less standard. For example, does that mean below 5 ppm for 4 out of 5 operational days, or 19 out of 20? Or, is "consistently" measured as other than time? The Commission's compliance monitoring unit has no clear definition of what "consistently" means through the language of this Condition. However, the concept of a "false trigger" is familiar to our CPMs who must deal with myriad power plant systems that must meet performance standards with machinery, pumps, valves, sensors, etc., that do not work perfectly 100% of the time.

Therefore, the Commission will delete from Condition **AQ-C10** the reference to "consistently" but continue the language that affords the project owner an opportunity to demonstrate, with any relevant information, that an exceedance of a performance standard was the result of a false trigger.

Ammonia Refrigerant

The Applicant has chosen to use ammonia as the refrigerant for the inlet cooling system. The Center's comments focus on the PMPD discussion that the Applicant should consider an alternative refrigerant that would have fewer potential offsite effects in the event of an accidental release. The Center asks the Commission to require the use of the alternative refrigerant unless the Applicant shows it is infeasible. The Commission staff has historically disfavored the use of anhydrous ammonia for any power plant uses and thoroughly evaluated its use as the refrigerant for the project. As discussed in the PMPD, the BEP I project already uses ammonia for its inlet chiller.

The BEP II project is designed to use about 15 percent of the amount of ammonia as BEP I. After its initial charge of the cooling system, the project is expected to require about 300 pounds of additional recharge ammonia every four to five years. Staff also calculated the potential to affect the Mesa Verde community, the largest concentration of residences 2.2 miles from the project. Staff calculated that the probability of a significant occurrence affecting Mesa Verde was 2 in 10,000,000. Staff calculated that a significant occurrence on Interstate 10, which is closer than Mesa Verde, was 2 in 1,000,000. (PMPD, p. 104) At the evidentiary hearings, public witnesses brought in a local newspaper story about the shut-down of Interstate 10, without injuries or fatalities, due to an ammonia incident at BEP I (Palo Verde Valley Times, September 29, 2004)

The PMPD recognizes that there could be benefits from the use of the alternative refrigerant and asks the Applicant to consider it. However, the Commission also imposes numerous conditions, not initially in the BEP I Decision, related to the use of the ammonia refrigerant, including preparation of an Ammonia Refrigeration Hazard Reduction Plan under EPA guidelines as well as automatic fire suppression systems and closure devices. (PMPD, pp. 104 – 107) See **HAZ-8, HAZ-10** and **HAZ-11**. On this basis, the Commission has properly determined that the use of ammonia refrigerant by the project does not create a significant impact nor significant public health and safety risk.

Cumulative Impacts Study Area

Lastly, the Center comments that the PMPD's use of a 6-mile radius for consideration of cumulative impacts is insufficient pursuant to CEQA and that the cumulative air quality analysis ignored the neighboring BEP I facility. First, the Commission's use of a 6-mile radius study area for cumulative impacts is a practice that was developed over decades of past proceedings because it consistently demonstrated for our CEQA-equivalent process the extent of potential public health and public safety impacts. Historically, air quality modeling had shown that air quality and public health impacts, if they occur, do so within a 6-mile radius. As applied, the Blythe II cumulative impact study area embraces all significant population centers for our public health analysis. There is no evidence in the record that suggests that the study area used in the proceeding and discussed in the PMPD was insufficient to capture all potential impacts.

The Center comments also assert that the PMPD air quality analysis ignored the neighboring BEP I facility. Yet, the PMPD discloses that the BEP I facility was considered as part of the "existing" environmental setting in which the potential direct air quality impacts of the BEP II projects were analyzed as well as potential cumulative air quality impacts from both BEP I and BEP II. The MDAQMD had no records identifying any other potential and/or permitted projects that could have interacted with the project and warranted analysis. (PMPD p. 27)

RESPONSE TO COMMENTS FROM THE PALO VERDE COLLEGE SMALL BUSINESS DEVELOPMENT CENTER

Quenton Hanson, Executive Director of the Small Business Development Center, submitted email comments calling for the inclusion of a Socioeconomics condition requiring the Applicant and its contractors to recruit local employees and procure materials locally when available and to the extent not prohibited by law. Such a condition was included in the Commission's Decision on the BEP I project as **SOCIO-2**. In public comments at the evidentiary hearings, Mr. Hanson has described the success of the local hiring and purchasing condition for the local Blythe economy and residents during BEP I construction and operation without any material hindrance to the construction and operation of the BEP I project. Local hiring and purchasing contribute to the Commission's finding that the project will provide a degree of economic benefits to the local area. Thus, since the Applicant and Staff concur, the Commission will include in the Socioeconomics section of this Decision a condition identical to **SOCIO-2** in the BEP I Decision.

Dated: December 13, 2005

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

/s/
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Commissioner and Acting Presiding Member
Blythe II AFC Committee

/s/
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